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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 487

AMOS L. TAYLOR, EXECUTOR UNDER THE WILL OF JESSE P. LYMAN, PETITIONER

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE PROBATE COURT FOR THE COUNTY OF MIDDLESEX AND COMMONWEALTH OF MASSACHUSETTS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The Probate Court filed a Report of Material Facts. (R. 1-5, 6.) The opinion of the Supreme Judicial Court of Massachusetts (R. 25-32) is reported at 324 Mass. 639.

JURISDICTION

The decree of the Probate Court of which review is here sought was entered on November 14, 1949, upon the rescript of the Supreme Judicial

Court of Massachusetts dated September 28, 1949. (R. 32-33.) The petition for a writ of certiorari was filed on December 19, 1949. The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1257 (3).

QUESTIONS PRESENTED

1. Whether Section 3213 of the Revised Statutes authorizing taxes to be sued for and recovered by the United States in the appropriate District Court of the United States prevented the allowance by the Probate Court of the undisputed claim for taxes assessed against the decedent, which was filed by the United States with Commissioners in insolvency appointed by the Probate Court.

2. Whether Section 3214 of the Revised Statutes required that the United States affirmatively prove that the Commissioner of Internal Revenue and the Attorney General had authorized the filing by the United States of its claim for assessed taxes.

STATUTES INVOLVED

The pertinent statutes are printed in the Appendix, *infra,* pp. 13-16.

STATEMENT

The testator, Jesse P. Lyman, died September 14, 1931, and his will was allowed and executors appointed and qualified October 6, 1931. The executors gave due notice of their appointment and filed an affidavit of such notice. (R. 2.)

The executors filed a representation of insolv-

ency on January 4, 1933 (R. 1, 2-3, 7), and commissioners to receive and examine all claims of creditors against the estate were duly appointed on March 31, 1933 (R. 16-17). At some time after this date the United States filed a claim for taxes with the commissioners in insolvency. (R. 4.)

On January 3, 1934, the commissioners filed their report allowing the claim of the United States for income taxes for the years 1930 and 1931 as a claim of the first class in the sum of $67,868.59. (R. 1, 3, 18-19.) On July 14, 1939, the executors filed a motion that the report of the commissioners be accepted and confirmed but no action was taken on the motion. (R. 1.)

On May 18, 1938, the United States commenced an action in the United States District Court for the District of Massachusetts, to collect the 1930 tax here in issue and the tax for 1931, included in the claim as allowed by the commissioners. (R. 4.) The 1930 income taxes, owed by the decedent at the date of his death, were assessed May 25, 1931. (R. 6.) The defense with respect to the 1930 tax was that the suit was barred by the six year statute of limitations provided by Section 276 (c) of the Revenue Act of 1928. The District Court dismissed the count for the 1930 tax "without prejudice to the right of the plaintiff to prosecute any other timely proceeding upon the same subject matter now pending in another Court." (R. 4.)

Upon the executor's petition, as amended, praying that the estate be determined to be solvent and that the claim of the United States as allowed in the report of the commissioners of insolvency be stricken out or reduced (R. 7-9), the Probate Court held that the estate was now solvent (R. 2) and that the claim of the United States for the 1930 tax of $31,990.36 was wrongfully allowed by the commissioners, because the claim was not filed within one year from the time when the executors gave bond and qualified as provided in Section 9, Chapter 197, II General Laws of Massachusetts (Ter. ed.), (R. 3, 4-5). Accordingly, it entered a decree reducing the claim of the United States as allowed by the commissioners to $35,878.23. (R. 10-11.)

On appeal by the United States the Supreme Judicial Court of Massachusetts reversed the Probate Court (R. 25-32) and ordered that part of the decree reducing the amount allowed on the claim of the United States to be struck out and that the full amount allowed by the commissioners is to stand as allowed (R. 25).

The executor seeks certiorari only with respect to the holdings that Sections 3744 and 3745 (c) of the Internal Revenue Code (the same as Section 3213 of the Revised Statutes) did not withhold jurisdiction from the Probate Court to allow the uncontested claim for 1930 taxes (R. 28-31) and that compliance with the terms of Section 3740 of

the Internal Revenue Code (see Section 3214 of the Revised Statutes, the statute in effect when the claim for taxes was filed), assuming it is applicable to the proceedings in this case, will be presumed (R. 31).

ARGUMENT

1. The jurisdiction of this Court is here ~~involved~~ involved (Pet. 2-3) under 28 U.S.C., Sec. 1257 (3), solely upon the ground that the decision of the Supreme Judicial Court of Massachusetts denies the petitioner three immunities granted him by federal statutes; immunity from suits for the recovery of federal taxes in all courts except the District Court of the United States; immunity from suits for the recovery of federal taxes not authorized by the Commissioner of Internal Revenue and directed by the Attorney General; and immunity from the enforcement of a federal tax other than by distraint or by suit in the District Court. These immunities are claimed, so far as here relevant, under Sections 3213 and 3214 of the Revised Statutes. (Appendix, *infra*, pp. 15-16). If, as we shall show, these sections did not forbid the filing of the undisputed claim for taxes assessed for 1930 with the Probate Court and the allowance of the claim by the court, the claimed immunities do not exist, or if they exist, they have not been denied in this case.

2. Section 3213 of the Revised Statutes, which authorizes taxes to be sued for and recovered in the name of the United States in the appropriate

District Court of the United States, did not bar the allowance of the undisputed claim for 1930 taxes by the Probate Court. The filing of the claim was not a suit for the recovery of taxes within the meaning of that section, even if it is assumed *arguendo* that that section confines jurisdiction over suits to recover taxes in all cases to the District Courts.

As the Supreme Judicial Court pointed out (R. 30), Section 3213 cannot reasonably be interpreted to apply to uncontested claims for taxes filed against the estate of a deceased person, because to do so would require an unnecessary suit in the District Court for a tax admittedly due without obviating the necessity of presenting the claim to the State Court, which has custody of the assets of the estate. Taxes due to the United States are debts (*Price* v. *United States,* 269 U. S. 492, 499), and it can hardly be supposed that Congress intended to compel the Government to pursue a more circuitous course with an admitted debt claim than other creditors in like circumstances. The court expressly did not decide whether Section 3213 would require suit in the District Court if the claim were contested. (R. 30.) Decisions of the federal courts have, however, recognized that state probate courts may receive and allow claims for federal taxes, without making any distinction as to whether the claim is contested or uncontested. *United States* v. *Ettelson,* 159 F. 2d

193 (C.A. 7th); *United States* v. *Peoples Trust & Savings Co.*, 97 F. 2d 771 (C.A. 7th); *United States* v. *First Nat. Bank*, 54 F. Supp. 351 (N.D. Ohio); cf. *United States* v. *Paisley*, 26 F. Supp. 237 (N.D. Ill.).

The provisions of Section 3466 of the Revised Statutes (Appendix, *infra*, p. 16) strengthen the conclusion that Congress never meant to require the United States to reduce its tax claims to judgment in a suit in a District Court as a prerequisite to enforcement of such claims in a state insolvency or probate proceeding. The stipulation of the section, that in cases of insolvency of a debtor or an estate covered by the section the debts due the United States shall first be satisfied,[1] has never, so far as is known, been held to give priority only in cases where the tax claim has been reduced to judgment by suit in a District Court. Cf., *e.g.*, *Illinois* v. *United States*, 328 U. S. 8; *Illinois* v. *Campbell*, 329 U. S. 362; *United States* v. *Waddill Co.*, 323 U. S. 353; *United States* v. *Texas*, 314 U. S. 480. On the contrary, the priority attaches in favor of a tax claim if it is a "debt", that is, if liability for the tax has been incurred, even

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[1] The priority thus given in the case of estates is implemented by Section 3467 of the Revised Statutes (Appendix, *infra*, p. 16) which provides that any executor or administrator who pays in whole or in part any debt due by the estate for which he acts before he satisfies and pays the debts due the United States from such estate, shall become answerable in his own person and estate to the extent of such payments for the debts due the United States.

though the tax has not been assessed. See *Spokane County* v. *United States,* 279 U. S. 80, 93; and cf. *Massachusetts* v. *United States,* 333 U. S. 611, 617 (fn. 8), 625-626, where the Court held that priority attached as to all the federal taxes due on the date of the assignment, even though some of the taxes were formally assessed after that date. In the present case the estate had been represented to be insolvent and the Probate Court thus had jurisdiction to settle the estate as an insolvent estate (*Greenwood* v. *McGilvray,* 120 Mass. 516, and see Sec. 2, c. 198, II General Laws of Massachusetts, Appendix, *infra,* p. 14), prior to the time the United States presented its claim for taxes. The 1930 tax here in issue had already been assessed. Under Section 3466 the filing of the claim with the estate was manifestly proper.[2]

Moreover, the practice of filing claims for unpaid taxes of deceased persons with their executors has long usage to support it and has never before been challenged. *Matter of Gellatly,* 283 N.Y. 125; *Matter of Smathers,* 249 App. Div. (N.Y.) 523; *Harrison* v. *Deutsch,* 294 Ill. App. 8; *United States* v. *Embrey,* 145 Fla. 277; and see cases cited *supra,* pp. 6 & 7.

Finally, Section 276 (c) of the Revenue Act of 1928 (Appendix, *infra,* p. 14) provides that a tax

[2] The estate only became solvent at a much later date as the result of litigation ending in a compromise. (R. 26.) The petition for a determination that the estate was solvent was not filed until 1948. (R. 7-8.)

which has been timely assessed may be collected by distraint or by a proceeding in court, but only if begun within six years after assessment or within the period for collection agreed upon in writing by the Commissioner and the taxpayer. The filing of the claim with the commissioners appointed by the Probate Court was clearly a "proceeding in court" within the meaning of Section 276 (c) (see *Robinson* v. *Robinson,* 173 Mass. 233, 241-243; *United States* v. *Ettelson,* 159 F. 2d 193, 196 (C.A. 7th); *United States* v. *Paisley,* 26 F. Supp. 237 (N.D. Ill.); *United States* v. *First Nat. Bank,* 54 F. Supp. 351 (N.D. Ohio)) and was filed within the six year period there provided, as the Supreme Judicial Court held. (R. 26-27.) The procedure followed in this case was thus expressly sanctioned by Section 276 (c).

It follows that the Supreme Judicial Court correctly decided that the Probate Court was not deprived by Section 3213 of the Revised Statutes of jurisdiction to decree that the claim of the United States for 1930 taxes is to be paid by the estate. The executor does not assert a conflict with any decision construing the statutory provisions involved in this case, and cases construing other statutes are not persuasive in light of the considerations already given.

3. Section 3214 of the Revised Statutes (Appendix, *infra,* p. 15) which was in effect when the

claim for taxes was filed with the commissioners, provides that no suit for the recovery of taxes shall be commenced unless the Commissioner of Internal Revenue authorizes it.[3] It seems clear that this provision is designed merely to prevent the institution of suits to recover taxes by Collectors except upon proper authority and that the facts regarding such authority would not be essential elements of the cause of action involved in the suit to recover taxes, as the lower court held. (R. 31.) In any event, the filing of the claim for taxes with the estate was not a suit for the recovery of taxes within the meaning of that section. Even assuming *arguendo* that the filing of the claim was such a suit, the court below correctly held (R. 31) that proper authorization for the claim filed by the Collector of Internal Revenue is to be presumed. See *Stearns Co.* v. *United States,* 291 U.S. 54, 62-64. *United States* v. *Ettelson,* 159 F. 2d 193, 195-

[3] The petitioner is apparently in error in quoting (Pet. 7) Section 3214 as including the provision that the Attorney General must direct that a suit to recover taxes be commenced. While it is true that Section 3740 of the Internal Revenue Code (26 U.S.C. 1946 ed., Section 3740) so provides, Section 3214 of the Revised Statutes was not amended to require authorization by the Attorney General for such a suit. Section 16 of the Act of March 3, 1933, c. 212, 47 Stat. 1489, 1517-1519, which was referred to in the notes to 26 U.S.C. 1946 ed., Section 3740, gave the President the power to transfer functions from one executive agency to another by executive order. Executive Order No. 6166, Section 5 (printed at 5 U.S.C. 1946 ed., Sections 124-132) transferred the functions of prosecuting or abandoning prosecution of claims in courts of the United States to the Department of Justice. It was apparently from this section of the executive order that Section 3740 in its present form was derived.

196 (C.A. 7th) expressly ruled that where a Collector files a claim for taxes with a probate court, it will be presumed that he had in his possession the assessment lists, which constitute his authority from the Commissioner to collect the taxes included therein. In the present case there is nothing to indicate that the Collector had not been authorized to collect the tax by filing claim for it with the decedent's estate.

Apart from the presumption that the Collector of Internal Revenue had received authority from the Commissioner of Internal Revenue to file the claim for taxes in this case, the fact that the claim has been prosecuted to its present posture by the Attorney General on behalf of the Treasury Department gives ample proof that the filing of the claim has been sanctioned by both the Attorney General and the Commissioner. This would comply with Section 3214 of the Revised Statutes, assuming *arguendo* that it is applicable to the filing of a claim, and indeed it would comply with Section 3740 of the Internal Revenue Code (see fn. 3, *supra,* p. 10), even though that section was not enacted until 1939 and thus was not in effect when the claim was filed in 1933.

CONCLUSION

The decision of the Supreme Judicial Court correctly construed and applied the federal statutes involved in this case. It denies the petitioner no

"immunity" granted by the statutes. There is no conflict. The petition for certiorari should, therefore, be denied.

Respectfully submitted,

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Special Assistants to the Attorney General.

JANUARY, 1950.

II General Laws of Massachusetts (Ter. ed.):

Chapter 197:

SECTION 9. Except as provided in this chapter, an executor or administrator, after having given due notice of his appointment, shall not be held to answer to an action by a creditor of the deceased which is not commenced within one year from the time of his giving bond for the performance of his trust, or to such an action which is commenced but not entered within said year unless before the expiration thereof the writ in such action has been served by delivery in hand upon such executor or administrator or service thereof accepted by him or a notice stating the name of the estate, the name and address of the creditor, the amount of the claim and the court in which the action has been brought has been filed in the proper registry of probate. An executor, administrator or administrator de bonis non shall not be held to answer to an action by a creditor of the deceased which is commenced but not entered within any other or additional period of limitation for bringing such action provided by or under this chapter unless before the expiration of such period the writ in such action has been served by delivery in hand upon him or service thereof accepted by him or a notice as aforesaid has been filed in the proper registry of probate. The probate court may allow creditors further time for bringing actions, not ex-

ceeding two years from the time of the giving of his official bond by such executor or administrator, provided that application for such further time be made before the expiration of one year from the time of the approval of the bond.

* * * * *

Chapter 198:

SECTION 2. If the probate court finds from the representation of an executor or administrator that the estate of the deceased will probably be insufficient for the payment of his debts, it may appoint two or more commissioners to receive and examine all claims of creditors against such estate, and to return a list of all claims presented to them, with the amount allowed on each. All debts of the estate of said deceased not at the time of such finding barred by any statute of limitations may be allowed either by said commissioners or by said court.

* * * * *

Revenue Act of 1928, c. 852, 45 Stat. 791:

SEC. 276. SAME—EXCEPTIONS.

* * * * *

(c) *Collection After Assessment.*—Where the assessment of any income tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within

six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such six-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Revised Statutes:

SEC. 3213. It shall be the duty of the collectors, in their respective districts, subject to the provisions of this Title, to prosecute for the recovery of any sums which may be forfeited by law. All suits for fines, penalties, and forfeitures, where not otherwise provided for, shall be brought in the name of the United States, in any proper form of action, or by any appropriate form of proceeding, qui tam or otherwise, before any circuit or district court of the United States, for the district within which said fine, penalty, or forfeiture may have been incurred, or before any other court of competent jurisdiction; and taxes may be sued for and recovered in the name of the United States, in any proper form of action, before any circuit or district court of the United States for the district within which the liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the said action.

SEC. 3214. No suit for the recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner of In-

ternal Revenue authorizes or sanctions the proceedings: *Provided,* That in case of any suit for penalties or forfeitures brought upon information received from any person, other than a collector or deputy collector, the United States shall not be subject to any costs of suit.

SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

(31 U.S.C. 1946 ed., Sec. 191.)

SEC. 3467. Every executor, administrator, or assignee, or other person, who pays any debt due by the person or estate from whom or for which he acts, before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

(31 U.S.C. 1946 ed., Sec. 192.)

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